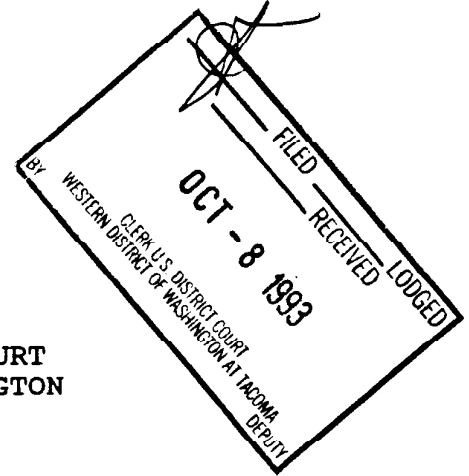
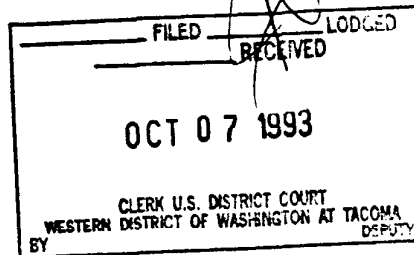


Hon. Robert J. Bryan



UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
ENTERED
ON DOCKET

OCT 8 1993

By Deputy

UNITED STATES OF AMERICA,
ON BEHALF OF THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY,
THE UNITED STATES DEPARTMENT OF
THE INTERIOR, AND THE NATIONAL
OCEANIC AND ATMOSPHERIC
ADMINISTRATION;
STATE OF WASHINGTON;
PUYALLUP TRIBE OF INDIANS;
MUCKLESHOOT INDIAN TRIBE;

Plaintiffs,

v.

PORT OF TACOMA

Defendant

Civil No. C93-5462B

ORDER DIRECTING THE
DEPOSIT OF NATURAL
RESOURCE DAMAGES INTO
THE REGISTRY OF THE
COURT

This Order is entered in furtherance of a Consent Decree
in the above captioned matter between Plaintiffs the United
States of America, State of Washington, Puyallup Tribe of Indians
and Muckleshoot Indian Tribe and Defendant the Port of Tacoma
("Settling Defendant"). Under the Consent Decree, Settling
Defendant has agreed, among other matters, to pay \$12,000,000

ORDER DIRECTING DEPOSIT OF
NATURAL RESOURCE DAMAGES - 1

U.S. Department of Justice
Environmental Enforcement Section
P.O. Box 7611, Ben Franklin Station
Washington, D.C. 20044

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1 (twelve million dollars), in installments as identified in the
2 Consent Decree, to the Natural Resource Trustees (National
3 Oceanic and Atmospheric Administration of the U.S. Department of
4 Commerce, the U.S. Department of the Interior, the Washington
5 Department of Ecology (on behalf of the Washington Department of
6 Fisheries, the Washington Department of Natural Resources, and
7 the Washington Department of Wildlife), the Puyallup Tribe of
8 Indians, and the Muckleshoot Indian Tribe) in settlement of
9 Settling Defendant's liability for Natural Resource Damages
10 caused by releases of hazardous substances from property owned,
11 managed or operated by Settling Defendant within the Commencement
12 Bay Environment, as defined in the Consent Decree. This Order
13 addresses handling and investment of those funds by the Registry
14 of the Court.

15 Pursuant to Rule 67 of the Federal Rules of Civil
16 Procedure, 28 U.S.C. § 2041, and Local Rule GR 6, and in
17 accordance with the terms of the Consent Decree, it is hereby

18 1. ORDERED that Settling Defendant, following entry of the
19 Consent Decree and in accordance with the payment schedules
20 established therein, pay to the Clerk of the Court all sums
21 specified in paragraph 51.b. of the Consent Decree, which sums
22 constitute recovery for Natural Resource Damages and Future
23 Trustee Assessment Costs, as defined in the Consent Decree; and
24 it is

25
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27
28 ORDER DIRECTING DEPOSIT OF
NATURAL RESOURCE DAMAGES - 2

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Washington, D.C. 20044

1 2. ORDERED that Settling Defendant shall make the
2 aforementioned payments by checks made payable to the Clerk of
3 the Court, bearing the notation Civil Action No. C93-5462B
4 (W.D. Wash.), which checks shall be sent to:

5 Office of the United States Attorney
6 3600 SeaFirst Fifth Avenue Plaza
7 800 Fifth Avenue
8 Seattle, Washington 98104

9 The U.S. Attorney shall immediately deposit such funds with the
10 Registry of the Court. The Settling Defendant shall cause
11 photocopies of each check and of any transmittal letter
12 accompanying the check to be sent to: Chief, Environmental
13 Enforcement Section, Department of Justice, P.O. Box 7611, Ben
14 Franklin Station, Washington, D.C. 20044; and to Robert A.
15 Taylor, NOAA Damage Assessment and Restoration Center, 7600 Sand
16 Point Way NE, BIN C15700, Seattle, WA 98115; and it is

17 3. ORDERED that an account shall be established in the
18 Registry for payments received in the above captioned matter and
19 for such other payments as may be received from time to time in
20 connection with restoration and protection of the ecosystem of
21 the Commencement Bay watershed, and that the account shall be
22 titled Commencement Bay Natural Resource Restoration Account
23 ("Commencement Bay Restoration Account"); and it is

24 4. ORDERED that the Clerk of the Court shall administer the
25 funds so received as follows:
26

27 ORDER DIRECTING DEPOSIT OF
28 NATURAL RESOURCE DAMAGES - 3

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1 a) \$100,000 of the funds received shall be deposited in
2 such interest-bearing federally insured commercial bank account
3 or accounts as the Clerk deems appropriate;

4 b) the balance of the funds received shall be used to
5 purchase 91-day Treasury Securities, at the highest prevailing
6 interest rate available for such Treasury Securities;

7 c) upon maturity of the Treasury Securities referred to
8 in subparagraph b), the Clerk shall consult with counsel for the
9 United States regarding the allocation of the proceeds of such
10 Treasury Securities between the bank account or accounts
11 identified in subparagraph a) and the purchase of additional
12 short-term Treasury Securities. Counsel for the United States
13 shall consult with representatives of the Natural Resource
14 Trustees and, depending upon the Natural Resource Trustees'
15 anticipated funding needs, shall advise the Clerk regarding the
16 desired allocation of such proceeds between the bank account or
17 accounts and reinvestment in Treasury Securities. The Clerk may
18 make any such allocations of funds as directed by counsel for the
19 United States without further Order of the Court; and it is

20 5. ORDERED that all income earned as interest on funds so
21 invested or deposited shall be credited to the Commencement Bay
22 Restoration Account; and it is

23 6. ORDERED that the Natural Resource Trustees may apply to the
24 Court for an Order establishing an investment procedure or
25 vehicle alternative to that identified in paragraph 4 above that

1 provides a comparable level of security and earnings potential,
2 which application may be acted upon by the Court without notice
3 to or consent by Settling Defendant; and it is

4 7. ORDERED that the Clerk shall prepare quarterly reports on
5 the status and activity of the Commencement Bay Restoration
6 Account showing payments received, disbursements made, income
7 earned, maturity dates of securities held, and principal balance,
8 and shall distribute the reports to counsel for the United
9 States; and it is

10 8. ORDERED that funds in the Commencement Bay Restoration
11 Account shall remain in the Registry until further order of this
12 Court; and it is

13 9. ORDERED that the Natural Resource Trustees shall establish
14 such decision making procedures regarding expenditures of funds
15 from the Commencement Bay Restoration Account as they deem
16 appropriate. Applications for orders for disbursements from the
17 Commencement Bay Restoration Account shall be made by the United
18 States on behalf of the Natural Resource Trustees. The
19 application shall be supported by a certification of the Natural
20 Resource Trustees that their determination to make such
21 disbursement was in compliance with said decision making
22 procedures and is consistent with the terms of the Consent Decree
23 and other applicable law. Such applications may be acted upon by
24 the Court without notice to or consent by Settling Defendant.
25 Any of the Natural Resource Trustees may petition the Court for

1 review of a decision by the United States to seek or not to seek
2 an application for an order for disbursement, provided that the
3 party or parties seeking review have complied with any dispute
4 resolution provisions adopted as part of the decision making
5 procedures referred to above; and it is

6 10. ORDERED that counsel for the United States shall serve as
7 the point of contact for the Clerk on behalf of the Natural
8 Resource Trustees, and shall distribute copies of the reports
9 referred to in paragraph 7 of this Order to the other Natural
10 Resource Trustees; and it is

11 11. ORDERED that the Clerk is authorized and directed by this
12 Order to deduct for maintaining funds in the Registry Account the
13 fee as authorized in the Federal Register Vol. 56, No. 213 at
14 page 56356 (November 4, 1991); and it is

15 12. ORDERED that a certified copy of this Order shall be
16 served upon the Clerk of this Court.

17
18 Dated 8 October 1993

Hon. Robert J. Bryan, Judge
United States District Court
Western District of Washington